HPS-115 (August 2006) August 31, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **05-2813**

JONATHAN MUSIC

v.

JAMES SHERMAN, Warden, Federal Correctional Institution, McKean
(W.D. Pa. Civ. No. 04-cv-161E)

Present: SCIRICA, Chief Judge, WEIS and GARTH, Circuit Judges

Submitted are:

(1) By the Clerk for possible summary affirmance; and

(2) Petitioner's summary affirmance response

in the above-captioned case.

Respectfully,

Clerk

MMW/BNB/ghb

ORDER

The Petitioner appeals from the District Court's denial of a petition, filed pursuant to 28 U.S.C. § 2241, that challenged the Bureau of Prisons' ("BOP") calculation of good conduct time under 18 U.S.C. § 3624(b). The Petitioner's claim is identical to that raised and rejected in O'Donald v. Johns, 402 F.3d 172 (3d Cir. 2005), cert. denied sub nom. Moreland v. Federal Bureau of Prisons, 126 S.Ct. 1906 (2006). In O'Donald, we held that the meaning of § 3624(b) is ambiguous and therefore deferred to the BOP's reasonable interpretation of the statute. Accordingly, for the reasons described in O'Donald, the District Court properly denied the Petitioner's § 2241 petition. Because this appeal presents "no substantial question," 3d Cir. LAR 27.4 and I.O.P. 10.6, we summarily affirm the District Court order entered May 19, 2005.

By the Court,
/s/ Leonard I. Garth
Circuit Judge

Dated: September 14, 2006
ghb/cc: Thomas W. Patton, Esq.
Michael L. Ivory, Esq.

Certified as a true copy and issued in lieu of a formal mandate on November 6, 2006

Teste: Marcia M. Waldron

Clerk, United States Court of Appeals for the Third Circuit